

REMARKS

In the Office Action,¹ the Examiner rejected claims 31-45 under 35 U.S.C. § 101; rejected claims 10-23 and 31-36 under 35 U.S.C. § 112, second paragraph; rejected claims 1-14, 17-19, 21, 22, 27, 28, 30-35, 38-42, and 45 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,160,811 to Partridge et al. (“Partridge”); rejected claims 15, 16, 20, 23-26, 29, 36, 37, 43, and 44 under 35 U.S.C. § 103(a) as being unpatentable over Partridge in view of U.S. Patent No. 7,299,353 to Le Pennec et al. (“Le Pennec”), and further in view of U.S. Patent No. 7,185,041 to End, III (“End”).

Claims 1-19, 21, 22, and 24-45 remain pending. Applicant amends claims 1, 10, 24, 27-31, and 37-45, and cancels claims 20 and 23.

Applicant respectfully traverses the rejection of claims 31-45 under 35 U.S.C. § 101. Regarding claims 31-37, the Examiner alleges: “[i]t appears that the system and firewall clusters can be implemented using ‘software’ only and therefore, claims are directed to non-statutory subject matter.” Office Action at 2. Applicant respectfully disagrees. Claim 37 does not recite only software; instead, claim 37 requires both “at least one memory” storing instructions (code) and “at least one processor for executing the code.” The combination of memory and a processor is, contrary to the Examiner’s assertion, a “machine” or “manufacture,” and therefore fully complies with § 101. Moreover, machines that execute software are well-established as statutory subject matter. As M.P.E.P. § 2106.01(I) explains: “Computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

being claimed as part of an otherwise statutory manufacture or machine. In such a case, the claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program.” M.P.E.P. § 2106.01(I) (September 2007).

Applicant also disagrees with the Examiner’s allegation that claims 38-45 are directed to non-statutory subject matter. Nevertheless, in an effort to expedite prosecution, Applicant amends independent claims 38-45 to obviate the Examiner’s rejection. Applicant therefore request that the Examiner withdraw the rejection of claims 31-45 under § 101.

Applicant respectfully traverses the rejection of claims 10-23 and 31-36 under 35 U.S.C. § 112, second paragraph. The Examiner’s rejection indicates various terms lacked antecedent basis. Applicant amends independent claims 10 and 31 to provide proper antecedent basis, and therefore respectfully request the Examiner to withdraw the rejection of claims 10-23 and 31-36 under § 112.

Applicant respectfully traverses the rejection of claims 1-14, 17-19, 21, 22, 27, 28, 30-35, 38-42, and 45 under 35 U.S.C. § 102(b) as being anticipated by Partridge. To properly establish that Partridge anticipates Applicants’ claimed invention under 35 U.S.C. § 102, each and every element of each of the claims in issue must be found, either expressly described or under principles of inherency, in that single reference. Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the ... claim.” M.P.E.P. § 2131, quoting Richardson v. Suzuki Motor Co., 868 F.2d 1126, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

Partridge does not disclose each and every element of Applicants' claimed invention. Claim 1 calls for a method for addressing packets in a firewall cluster including a plurality of firewall nodes, including: "selecting one of the firewall nodes for processing a first packet; [and] receiving, at a first processor associated with the selected firewall node, the first packet" (emphasis added). Partridge fails to teach or suggest at least "a firewall cluster including a plurality of firewall nodes" and "selecting one of the firewall nodes for processing a first packet," as recited by claim 1. Indeed, the Examiner acknowledges as much. Office Action at 11. Accordingly, Partridge cannot anticipate claim 1.

Independent claims 10, 27, 28, 30, 31, 38, and 45, although of different scope than claim 1, patentably distinguish from Partridge for at least the same reasons as claim 1. Claims 2-9, 11-14, 17-19, 21, 22, 32-35, and 39-42 depend from independent claims 1, 10, 31, or 38 and therefore patentably distinguish from Partridge for at least the reasons discussed above. Applicant therefore respectfully requests the Examiner to reconsider and withdraw the rejection of claims 1-14, 17-19, 21, 22, 27, 28, 30-35, 38-42, and 45 under 35 U.S.C. § 102(b) as being anticipated by Partridge.

Applicant respectfully traverses the rejection of claims 15, 16, 20, 23-26, 29, 36, 37, 43, and 44 under 35 U.S.C. § 103(a) as being unpatentable over Partridge in view of Le Pennec, and further in view of End. A *prima facie* case of obviousness has not been established at least because the differences between the prior art and Applicant's claims are such that it would not have been obvious for one of ordinary skill in the art at the time of the invention to modify the prior art to arrive at Applicant's claimed invention.

Claims 15, 16, and 23 depend from independent claim 10 and therefore include all of the elements recited therein. Claim 10 recites a method for addressing packets associated with a plurality of processors, each processor being associated with a one of a plurality of firewall nodes in a firewall cluster, the method comprising: “selecting one of the firewall nodes for processing a packet” (emphasis added). As discussed above, Partridge fails to teach or suggest this combination of elements. End and Le Pennec, taken individually or in combination, fail to cure the deficiencies of Partridge.

The Examiner alleges that End discloses a “hash function.” Office Action at 9. Even assuming this assertion were true, End fails to teach or suggest a firewall, firewall node, or firewall cluster, as recited by independent claim 10 and required by claims 15, 16, and 23.

Le Pennec fails to cure the deficiencies of Partridge and End. The Examiner alleges that Le Pennec “teaches using one or more firewalls as the set of processors, such that the one or more firewalls form a firewall cluster.” Office Action at 11. Applicant disagrees. Le Pennec discloses “a single firewall device” (Le Pennec, 2:52-60) that replaces “a classic system where two networks NET1 10 and NET 2 16 belong to two different administrative entities [and] are securely interconnected via a complex firewall system comprising a first firewall FW1 12 and a second firewall FW2 14” (Le Pennec, 3:19-23). Le Pennec’s system, therefore, includes only a single firewall device, not a “plurality of firewall nodes,” as recited by independent claim 10 and required by dependent claims 15, 16, and 23.

Moreover, the prior art system that Le Pennec discloses includes two firewalls that belong to “two different administrative entities.” Le Pennec, 3:19-23; Fig. 1. Two

separate firewalls belonging to different entities do not constitute a teaching or suggestion of a plurality of firewall nodes in a “firewall cluster,” as recited by independent claim 10 and required by dependent claims 15, 16, and 23.

Le Pennec also does not teach or suggest “selecting one of the firewall nodes for processing a packet, the selected firewall node including a first processor” (emphasis added). Instead, all packets in the prior art system disclosed by Le Pennec are sent from firewall 12 to firewall 14 (Fig. 1). Le Pennec does not receive a packet and “select[] one of the firewall nodes for processing a packet,” as recited by independent claim 10 and required by dependent claims 15, 16, and 23.

Because the cited references, taken individually or in combination, fail to teach or suggest each and every element required by claims 15, 16, and 23, no *prima facie* case of obviousness has been established for claims 15, 16, and 23. Independent claims 24, 29, 37, and 44, although of different scope than claim 10, recite elements similar to claim 10. Claims 25, 26, 36, and 43 depend from independent claims 24, 29, and 37 and therefore patentably distinguish from the cited references for at least the reasons discussed above. Applicant therefore respectfully requests that the Examiner withdraw the rejection of claims 15, 16, 24-26, 29, 36, 37, 43, and 44 under 35 U.S.C. § 103(a) as being unpatentable over Partridge in view of Le Pennec, and further in view of End. Applicant cancels claims 20 and 23, rendering the rejection of claims 20 and 23 moot.

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge
any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

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By: 

Nathan A. Sloan
Reg. No. 56,249
404.653.6464